

ALCOHOLIC BEVERAGES DIVISION[185]

Adopted and Filed

**Rule making related to filling and sale of mixed drinks or cocktails in a container
other than the original**

The Alcoholic Beverages Division hereby amends Chapter 4, “Liquor Licenses—Beer Permits—Wine Permits,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in 2020 Iowa Acts, House File 2540.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 123.30, 123.43A and 123.49.

Purpose and Summary

This rule making adopts a new rule establishing how a container other than the original container shall be filled with a mixed drink or cocktail, shall be properly sealed so as to not be considered an open container under Iowa Code sections 321.284 and 321.284A, and shall be sold by class “C” liquor control licensees and class “C” native distilled spirits liquor control licensees.

The Department of Transportation and the Department of Public Safety were consulted in the process of adopting this rule. The two departments are responsible for cooperating to ensure the proper and adequate enforcement of Iowa Code chapter 321, “Motor Vehicles and Law of the Road,” which establishes Iowa’s open container laws. The Department of Public Safety is also the primary alcoholic beverage control law enforcement authority in Iowa, pursuant to Iowa Code section 123.14.

The Department of Public Safety advised the Division on the types of containers that should not be allowed to be used in the sale of to-go mixed drinks and cocktails. The Department recommended that paper, plastic, and Styrofoam cups be prohibited because of the ease of use or access the containers provide and the ability for consumers to conceal consumption while driving, which the Department felt would pose serious dangers to the motoring public and hamper the Department’s enforcement efforts. This rule making prohibits all paper and Styrofoam cups from being used, and prohibits plastic cups that are intended for single use only. Plastic cups that are intended to be reused by a consumer are not prohibited.

The Department of Transportation advised the Division on the types of allowable container-sealing methods that would demonstrate an effort to comply with state and federal open container laws. The Department recommended that the sealing methods be precisely described in the rule because vague or undefined sealing methods could jeopardize \$12 million in federal highway funds allocated to the State of Iowa.

On September 29, 2020, the National Highway Traffic Safety Administration (NHTSA) issued a preliminary review of the rule and determined that it is necessary to keep Iowa in compliance with federal open container requirements (23 U.S.C. Section 154). In its ruling, the NHTSA stated, “The State’s emergency rulemaking requires to-go cocktails and mixed drinks to be fully sealed in a way that will not allow a driver or passenger in a motor vehicle to open it and remove some of the contents without damaging the seal. Such approaches comply with the requirements of Section 154.”

The Division requested from the Iowa Restaurant Association examples of the containers and sealing methods being used by licensees in the marketplace. Two examples were provided by the Association, and those examples were incorporated into the rule in paragraphs 4.10(3)“b” and 4.10(3)“c.”

Finally, the Iowa Alliance of Coalitions for Change, a group of public health and substance misuse experts from across the state, recommended that a label be present on the container clearly marking the

contents as containing alcohol. The Department of Public Safety also supported a labeling requirement, indicating that the requirement would assist in its roadside enforcement efforts. As such, a labeling requirement is included in subrule 4.10(4).

Overall, the Division feels that this rule is reasonable. It balances protecting public safety with the business needs of licensees, and it secures critical federal funding for the State of Iowa.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 7, 2020, as **ARC 5220C**. This rule making was also adopted and filed emergency and published in the Iowa Administrative Bulletin as **ARC 5221C** on the same date. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Administrator, with approval of the Alcoholic Beverages Commission, on November 19, 2020.

Fiscal Impact

This rule making has a fiscal impact to the State of Iowa. On September 29, 2020, the NHTSA issued a preliminary review of the rule and determined that the rule is necessary to keep Iowa in compliance with federal open container requirements (23 U.S.C. Section 154) and keep the State from losing approximately \$12 million in federal funding for bridge and road construction projects. The fiscal impact of this rule making to class “C” liquor control licensees and class “C” native distilled spirits liquor control licensees is indeterminable.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any, pursuant to 185—Chapter 19.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on January 20, 2021, at which time the Adopted and Filed Emergency rule making is hereby rescinded.

The following rule-making action is adopted:

Adopt the following new rule 185—4.10(123):

185—4.10(123) Filling and selling of mixed drinks or cocktails in a container other than the original container. Class “C” and class “C” native distilled spirits liquor control licensees and the licensee’s employees may fill and sell mixed drinks or cocktails in a container other than the original container

subject to the requirements and restrictions provided in 2020 Iowa Acts, House File 2540, sections 10, 11, 12, and 13, and this rule.

4.10(1) Definitions.

“Alcoholic liquor,” for the purposes of this rule, means “alcoholic liquor” as defined in Iowa Code section 123.3(5).

“Mixed drink or cocktail,” for the purposes of this rule, means “mixed drink or cocktail” as defined in Iowa Code section 123.3(32).

“Native distilled spirits,” for the purposes of this rule, means “native distilled spirits” as defined in Iowa Code section 123.3(34).

“Original container,” for the purposes of this rule, means a vessel containing alcoholic liquor or native distilled spirits that has been lawfully obtained and has been securely capped, sealed, or corked at the location of manufacture.

“Sealed container,” for the purposes of this rule, means a vessel containing a mixed drink or cocktail that is designed to prevent consumption without removal of the tamper-evident lid, cap, or seal. “Sealed container” does not include a container with a lid with sipping holes or openings for straws, a cup made of plastic that is intended for one-time use, or a cup made of paper or polystyrene foam.

“Tamper-evident,” for the purposes of this rule, means a lid, cap, or seal that visibly demonstrates when a container has been opened.

4.10(2) Filling requirements.

a. A sealed container shall be filled and sold only by the licensee or the licensee’s employees who are 18 years of age or older.

b. A sealed container shall be filled only upon receipt of an order by a consumer of legal age.

c. A sealed container shall be filled only with mixed drinks or cocktails composed in whole or in part with alcoholic liquor or native distilled spirits from an original container purchased from a class “E” liquor licensee.

d. The filling of a sealed container shall at all times be conducted in compliance with applicable state and federal food safety statutes and regulations.

4.10(3) Sealing requirements. A sealed container shall bear one of the following tamper-evident sealing methods:

a. A plastic heat shrink wrap band, strip, or sleeve extending around the cap or lid to form a seal that must be broken when the container is opened.

b. A screw top cap or lid that breaks apart when the container is opened.

c. A vacuum or heat-sealed pouch containing the mixed drink or cocktail.

4.10(4) Labeling requirements. A sealed container shall bear a label affixed to the container in a conspicuous place legibly indicating the following information:

a. The business name of the licensee that sold the mixed drink or cocktail.

b. The words “CONTAINS ALCOHOL.”

4.10(5) Sealed container not deemed an open container. A sealed container shall not be deemed an open container, subject to the requirements of Iowa Code sections 321.284 and 321.284A, provided the sealed container is unopened, the seal has not been tampered with, and the contents of the sealed container have not been partially removed.

4.10(6) Restrictions.

a. A sealed container shall not be filled in advance of a sale.

b. A sealed container shall not meet the definition of “canned cocktail” as defined in Iowa Code section 123.3(11).

c. A licensee or a licensee’s employees shall not allow a consumer to fill a sealed container.

d. The filling and selling of a sealed container shall be limited to the hours in which alcoholic beverages may be legally sold.

e. A sealed container shall not be sold to any consumer who is under legal age, intoxicated, or simulating intoxication.

4.10(7) Record keeping requirements.

a. A licensee shall maintain records, in printed or electronic format, of all sales of sealed containers. The records shall state the following:

- (1) The business name of the licensee that sold the mixed drink or cocktail.
- (2) The date and time of the sale.
- (3) A description of the product sold.

b. A licensee shall keep the required records for a three-year period from the date the record was created.

c. Records shall be open to inspection pursuant to Iowa Code section 123.30(1), and may be subject to administrative subpoena issued by the administrator.

4.10(8) *Violations.* Failure to comply with the requirements and restrictions of this rule shall subject the licensee to the penalty provisions provided in Iowa Code chapter 123.

This rule is intended to implement Iowa Code sections 123.30, 123.43A, and 123.49.

[Filed 11/30/20, effective 1/20/21]

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